ESTATE OF PAUL GRANT	:	Order Affirming Decision
	:	
	:	Docket No. IBIA 94-8
	:	
	:	March 14, 1994

Appellant Leah Bear Cub, through counsel, Fred W. Gabourie, Sr., Esq., Plummer, Idaho, seeks review of an August 25, 1993, order denying rehearing issued by Administrative Law Judge Vernon J. Rausch in the Estate of Paul Grant (decedent), IP TC 487R 89-1. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Decedent, who had dual enrollment as Fort Peck Allottee A-3165 and Fort Berthold Unallottee U-46, died intestate on April 23, 1989. Hearings to probate decedent's trust estate were held by Judge Rausch on August 24, 1989, and September 23, 1992. In addition, several depositions were taken. Evidence presented showed that decedent had been married three times, but was divorced at the time of his death; and that he had seven children, Paul Robert Grant, Jr., Malcom Matthew Grant, appellant, Maxine Grant Greybull, Victor Grant, Pauline Grant, and David Leonard Grant. Conflicting evidence was presented concerning whether decedent was also the father of Gertrude Fool Bear. In a June 18, 1993, order determining heirs, Judge Rausch found that Gertrude was decedent's daughter, and ordered distribution of decedent's trust estate to the eight children in equal shares.

Appellant filed a timely petition for rehearing, challenging the finding that Gertrude was decedent's daughter. On August 25, 1993, Judge Rausch denied rehearing. Appellant appealed from that order.

Appellant asks the Board "to take judicial notice of certain official information" (Opening Brief at 2). Appellant cites the fact that Gertrude has no birth certificate; refers without explanation to tribal court probate proceedings concerning decedent's non-trust property; refers to an alleged 1978 letter from Gertrude to the Standing Rock Tribal Council concerning Gertrude's request to change her name on her enrollment records from Grant to Fool Bear in which appellant says Gertrude stated "that Paul Grant was NOT her father. That he did not claim her" (Opening brief at 3; emphasis in original); and mentions a 1989 letter from the Bureau of Indian Affairs to an attorney stating that there was no record of Gertrude's birth or paternity, apparently at BIA. Appellant did not provide copies of any of the referenced documents.

Judge Rausch was well aware that Gertrude had no birth certificate, because Gertrude herself told him that she had not been able to obtain one because she was born in the country at her grandparents' home. The Board presumes that appellant's reference to tribal court probate proceedings refers to the fact that the tribal court did not list Gertrude as decedent's daughter. Gertrude stated that she had been unable to attend the tribal

court proceedings and therefore had not raised the issue of her paternity in that forum. The Board concludes that Judge Rausch fully considered the issues raised on appeal in regard to official records of Gertrude's paternity, and finds no need to take judicial notice of facts already of record.

As noted above, appellant failed to provide a copy of the alleged 1978 letter from Gertrude to the Standing Rock Tribal Council. The Board declines to reach any conclusion based on the alleged existence and contents of a document that appellant has failed to produce, although she has had more than 5½ years to do so.

Appellant also argues that Gertrude should be required to undergo a blood test to determine paternity. Appellant contends that because the Department determines an Indian decedent's heirs with reference to state intestacy laws and because "all of the States" (Id. at 1) allow blood tests to determine paternity, the Department should also require blood tests. Appellant argues that following state law in regard to blood tests "would certainly follow the footsteps of" (Id. at 2) the Board's decision in Estate of Victor Blackeagle, 16 IBIA 100, recon. denied, 17 IBIA 5 (1988). In Blackeagle the Board held that the inheritance rights of an adopted child are determined with reference to the law of the state in which a decedent's trust property is located.

In determining intestate succession to trust property, Federal law incorporates the laws of descent and distribution in force in the state where the trust lands are situated (25 U.S.C. §§ 348 and 464 (1988)). These state laws establish hereditary succession. See, e.g., definition of "descent" in Black's Law Dictionary 400 (5th ed. 1979). Reference to the laws of descent and distribution does not incorporate the whole body of state law, or allow the Department to rely upon state law to require invasive tests not otherwise authorized by Federal law.

As before Judge Rausch, appellant has cited no Federal statute or regulation authorizing the Department to require an Indian claimant to undergo a blood test in Departmental probate proceedings. The Board is not independently aware of any such authorization. See Estate of Matthew Pumpkinseed, 25 IBIA 98, 103 n.7 (1994). The Board concludes that the Department has no authority to require Gertrude to undergo a blood test. 1/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Administrative Law Judge Rausch's order of August 25, 1993, is affirmed.

Kathryn A. Lynn	Anita Vogt
Chief Administrative Judge	Administrative Judge

1/ This conclusion would not foreclose the possibility of using blood tests when the persons to be tested voluntarily agree to the test.